

SEP 05 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

JULIA C. DUDLEY, CLERK
BY: *A. Seagle*
DEPUTY CLERK

SIGMA LAMBDA UPSILON/
SEÑORITAS LATINAS UNIDAS
SORORITY, INC.,

Plaintiff,

v.

RECTOR AND VISITORS OF THE
UNIVERSITY OF VIRGINIA, et al.,

Defendants.

Case No.: 3:18-cv-00085-GEC

**CONSENT ORDER GOVERNING TREATMENT OF PROTECTED
STUDENT EDUCATION RECORDS SOUGHT IN DISCOVERY**

In this action, Plaintiff has issued discovery seeking among other things, documents and information that constitutes “education records” containing personally identifiable information of current or former University of Virginia students, as defined by the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g and 34 C.F.R. § 99.3. These student education records may be released pursuant to a judicial order, without the students’ prior consent, as set forth in 20 U.S.C. § 1232g(b) and 34 C.F.R. § 99.31(a)(9)(i), provided that affected students have an opportunity to seek protective action.

Plaintiff’s discovery requests implicate FERPA and education records or personally identifiable information governed by FERPA. Accordingly, the parties have requested the Court’s assistance in implementing the discovery of this information and the notification of students whose education records and personally identifiable information are at issue.

Based upon the foregoing, IT IS HEREBY ORDERED as follows:

1. To the extent that Plaintiff’s discovery requests seek documents and information constituting “education records” of current or former UVA students, as defined by FERPA, this

Order hereby authorizes Defendants to produce such documents and information in accordance with 20 U.S.C. §1232g(b) and 34 C.F.R. § 99.31(a)(9)(i), after following the notice protocol set forth below.

2. Nothing in this Order waives or adjudicates any non-FERPA-related objection Defendants may have to Plaintiff's discovery requests.

3. Before producing student education records or personally identifiable information during discovery, Defendants will make a reasonable effort in accordance with 34 C.F.R. § 99.31(a)(9)(ii) to notify affected students by providing a notice stating:

A party in the lawsuit captioned Sigma Lambda Upsilon/Señoritas Latinas Unidas Sorority, Inc. v. Rector and Visitors of the University of Virginia, Frank M. Conner III, Patricia M. Lampkin, J. Marshall Pattie, Edgar Halcott Turner II, and Caroline Wagner, Case No. 3:18-cv-00085-GEC, now pending before the United States District Court for the Western District of Virginia, Charlottesville Division, has requested certain information maintained by Defendants relating to a 2018 hazing investigation of Plaintiff. The Court has ordered Defendants to provide this information, pursuant to a Stipulated Protective Order, a copy of which is enclosed. Certain of your education records are subject to this request.

Defendants are required by law to make a reasonable effort to notify you that certain of your education records, as defined by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g and 34 C.F.R. § 99.3, may be produced under the judicial order and that you may seek protective action if you wish. Federal law permits disclosure of education records without prior written consent if the disclosure is to comply with a judicial order, following a reasonable effort to notify any affected students to allow the affected student to seek protective action.

The Court's Order allows 14 days from the date of this Notice during which time you may seek protective action in accordance with 34 C.F.R. § 99.31(a)(9)(ii). You may do so by submitting a letter to the Court at the address below.

Any objections to the production of requested records should be sent to the Court's mailing address within 14 days from the date of this Notice:

Clerk's Office
U.S. District Court
225 West Main Street, Room 304
Charlottesville, VA 22902

You may seek further information by visiting the Court's website at <http://www.vawd.uscourts.gov/>.

Defendants cannot provide legal advice to individuals receiving this notice; however, you have a right to seek independent counsel if you wish. If you wish to seek protective action, any such request must be received by the Court no later than 14 days after the date of this Notice. Copies of the Court's Order and the cited federal regulations are enclosed.

The notice shall not include any other instructions from Defendants. Officials speaking on behalf of Defendants may not provide legal advice to any student with respect to the notice, but if any such official is contacted by a student, that person may state that the student may advise the Court directly of any concerns the student may have, and may generally describe the nature of the student's education records in question.

4. After the fourteen-day notice period expires, and after allowing sufficient time for the Court to advise of any requests for protective action, Defendants shall promptly make available the records for which no request for protective action was made by the respective student. Such records will be made available without redactions and with all personally identifiable information included. If any request for protective action is made by a student during the fourteen-day period, then that student's records shall not be released without further instruction from the Court.

5. Student education records are to be treated as Confidential and "Attorney Eyes Only" pursuant to the Protective Order entered by the Court.

6. To the extent that any student education records are submitted to this Court, personally identifiable information shall be redacted therefrom, unless the affected student(s) give advance written consent to such disclosure. Alternatively, the parties can elect to file non-redacted versions under seal pursuant to the parties' Protective Order.

IT IS SO ORDERED.

Dated: September 4, 2019


Senior United States District Judge